S.B. Civil Misc. Appeal No.1004/2006

Mohd. Saleem and another.
vs.
Smt. Chaman Bano.

Date : 20.9.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. A Patel, for the appellants.
Mr. ML Panwar, for the respondent.

- - - - -

At the request of learned counsel for the parties, this appeal is finally heard and decided.

Both the learned counsels for the parties agree that the first appellate court has committed serious error of law in recording finding on issue no.1 only and thereafter, remanding the matter to the trial court for deciding the suit afresh.

If the finding of the issue no.1 was wrongly recorded by the trial Court and that would have affected the decision of the trial court, then the first appellate court itself could have decided the first appeal on merits and there was no occasion for the first appellate court to have remanded the matter back to the trial court on the basis of the findings recorded on issue no.1.

The suit can be remanded only within the provisions of Order 41 Rules 23, 23A and 25 CPC. The cases cannot be

remanded in violation of Rule 24 of Order 41 just to multiply the proceedings and rewriting of the judgment by the subordinate court.

In view of the above, the finding recorded by the first appellate on issue no.1 without considering the entire appeal cannot be sustained. The piece meal decision on question raised in the appeal cannot be appreciated. It will not be proper for this Court to confirm the finding of the first appellate court on issue no.1 without there being a proper appeal for challenging the entire decision of the court below on all issues. It will also be improper to record any finding on issue no.1 by this Court in an appeal arising out of order of remand only. Since it will be embarrassing for the same Judge to decide the issue no.1 afresh in view of the decision given by him on issue no.1 in the order dated 24.1.2006, therefore, it will be appropriate that the appeal be decided by the learned District Judge, Jodhpur himself.

Consequently, this appeal is allowed and the order dated 24.1.2006 is set aside. The Appeal No.48/2004 is herewith from the Court of Additional District Judge No.1, Jodhpur and is hereby transferred to the Court of District Judge, Jodhpur for deciding in accordance with law.

(PRAKASH TATIA), J.

S.Phophaliya